

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
 )  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
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U S WEST Communications, Inc. and )  
Citizens Utilities Company Joint )  
Petition for Waiver of the Subscriber )  
Carrier Selection Change Provisions )  
Of the Telecommunications Act of 1996 )

APR - 7 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
CC Docket No. 94-129

JOINT PETITION FOR WAIVER  
OF U S WEST COMMUNICATIONS, INC.  
AND CITIZENS UTILITIES COMPANY

I. REQUEST FOR RELIEF

U S WEST Communications, Inc. ("U S WEST") and Citizens Utilities Company ("Citizens"),<sup>1</sup> pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules,<sup>2</sup> respectfully request the Commission to grant a limited waiver of the authorization and verification requirements of the Commission's carrier-change rules, 47 C.F.R. Sections 64.1100 through 64.1190,<sup>3</sup>

<sup>1</sup> Citizens has an incorporated telephone company operation in each of the states where the customer base transfer is to occur.

<sup>2</sup> See 47 C.F.R. § 1.3.

<sup>3</sup> The Commission's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless certain criteria have been met. See 47 C.F.R. § 64.1150.

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and relevant Orders,<sup>4</sup> to the extent necessary to permit Citizens to be substituted as the local and local, long-distance carrier for certain of U S WEST's current customers across service territories<sup>5</sup> in ten states over the next two years.<sup>6</sup> (The exact timing of the transfer will depend on the approval of the affected state public utility commissions.)

As demonstrated herein, the rural exchange sales being undertaken between Citizens and U S WEST fully satisfy the special circumstances required for a waiver

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<sup>4</sup> See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508 (1998), pets. for recon. pending, appeal in abeyance sub nom. MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir.).

<sup>5</sup> Generally, the totality of the transfers to Citizens will involve approximately 174 exchanges.

<sup>6</sup> Because the policy and legal reasons for granting a waiver under the circumstances of a sale of a customer base is the same, and the communications with the customers is substantially similar, U S WEST and Citizens here ask, in a single Waiver document, for relief regarding all the sales expected to take place between U S WEST and Citizens. We attach hereto a list of the sales in the various states and the affected exchanges. See Exhibit A.

Filings have already been made before this Commission with respect to Idaho and Washington (see U S WEST Section 63.71 Application Concerning Eight Idaho Exchanges, File No. WPD-452, filed Dec. 17, 1999 ("Idaho/Washington Application")), and North Dakota (see U S WEST Section 63.71 Application Concerning Eight North Dakota Exchanges, File No. WPD-444, filed Nov. 24, 1999 ("North Dakota Application")), and Expedited Joint Petition for Waivers filed by U S WEST and Citizens, CC Docket No. 96-45, filed Feb. 15, 2000 (requesting a Part 36 Study Area waiver relating to North Dakota)). Please note that the North Dakota Application has been deemed approved, as of this date.

of Commission rules, as stated in Wait Radio v. FCC.<sup>7</sup> Moreover, grant of the instant Petition will further serve the public interest.<sup>8</sup>

## II. BACKGROUND

On June 16, 1999, U S WEST and Citizens executed Purchase Agreements whereby Citizens will acquire approximately 530,000 U S WEST access lines in ten states. In November and December, 1999, U S WEST filed Section 63.71 Applications to transfer to Citizens the Idaho, North Dakota and Washington access lines being acquired by Citizens. In those filings, U S WEST advised the Commission that the transfer would have no known immediate or substantial effect on the services provided to the customers in question and that no services would be reduced or impaired as a result of the transfer. Indeed, it was U S WEST's expectation that service would improve over time due to the expertise of Citizens in providing services in rural communities.<sup>9</sup>

As of this date, some affected customers have been informed of the carrier changes associated with the transfer of these access lines.<sup>10</sup> As the regulatory approval process progresses in additional states, customers will be similarly notified.

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<sup>7</sup> See WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>8</sup> This is most obviously the case where the sale has been approved by the state commission, as is the case with North Dakota. See Letter to Katherine Schroder, Deputy Chief Accounting Policy Division, Federal Communications Commission from the Public Service Commission, State of North Dakota, dated Feb. 9, 2000.

<sup>9</sup> See Idaho/Washington Application at 2; North Dakota Application at 2.

The notifications already sent out have advised customers that their services, including their local calling, telephone number and 911 service, would remain the same and that transfer of their service to Citizens would be automatic, with the customer not having to do anything. A local phone number was provided for customers to call with questions.<sup>11</sup>

Once the sales are completed, it is expected that Citizens will be communicating directly with the customers through a type of "welcome letter." That communication will undoubtedly repeat some of what the customers have already been told regarding the transfer. In addition, customers will be advised that the transfer did not affect their interstate, interexchange carrier service and that they need do nothing to keep their currently chosen carrier for such services.

### III. SPECIAL CIRCUMSTANCES WARRANT A WAIVER

The Commission has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>12</sup> Such circumstances exist here. To the extent the sales between U S WEST and Citizens are ultimately approved as in the public interest, the

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<sup>10</sup> This is the case with regard to the Idaho, North Dakota and Washington customers in the affected exchanges.

<sup>11</sup> Copies of these communications were included with the Idaho/Washington and North Dakota Applications. The Idaho/Washington Application also includes a customer notification to some state of Washington customers included in Idaho exchanges.

<sup>12</sup> Wait Radio, 418 F.2d. at 1159; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

concomitant action of moving the customers over to Citizens is obviously a necessary aspect of realizing that public interest.<sup>13</sup>

In an increasing number of Orders, the Commission (or the Common Carrier Bureau, through delegated authority) is finding that granting of similar waivers is in the public interest.<sup>14</sup> As were the cases considered in the Orders already issued granting waiver relief, prior customer notification has occurred so that the carrier-

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<sup>13</sup> For this reason, U S WEST agrees with Global Telecompetition Consultants, Inc. ("GTC") that the Commission should take action regarding its existing carrier-change rules either to generally waive the requirements in those cases where a sale of some portion (or all) of the subscriber base is occurring or amend the rules to render them inapplicable to such sales. See Petition for Rulemaking submitted by GTC on Dec. 30, 1999.

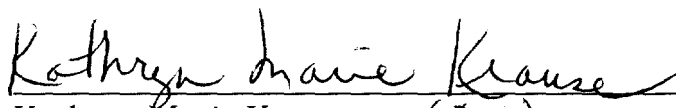
<sup>14</sup> See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc. Request for Waiver, Order, 14 FCC Rcd. 15268, 15269-70 ¶ 4 (1999) ("IEComm Order") (waiver granted to allow transfer of customer base pursuant to asset purchase agreement with another carrier), and citing to WAIT Radio v. FCC, 418 F.2d at 1159. Id. at 15270 ¶ 5 (granting International Exchange Communications, Inc. a waiver in conjunction with the purchase of International Telecommunications Corp.'s assets); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Iowa Telecommunications Services Petition for Waiver, CC Docket No. 94-129, Order, DA 99-2777, rel. Dec. 21, 1999 (waiver granted to allow Iowa Telecommunications Services ("ITS") to change the preferred carrier of those consumers currently presubscribed to GTE of the Midwest to ITS); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; MCI WorldCom, Inc. Request for Waiver, Order, 14 FCC Rcd. 12264 (1999) (waiver granted to allow transfer of customer accounts pursuant to purchase agreement with another carrier); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Sprint Communications Company, L.P. Request for Waiver, Order, 14 FCC Rcd. 9118 (1999) (waiver granted to allow transfer of customer base to Sprint after dissolution of a joint venture with another carrier); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; CoreComm Limited Request for Waiver, Order, 14 FCC Rcd. 7301 (1999) (waiver granted to allow transfer of customer base after sale or corporate assets as part of bankruptcy proceeding).

affecting change will not come as a surprise to the affected customers. A follow-up "welcome" letter will occur around the time of the actual transfer. A refusal to allow the change will simply cause confusion among the customers with a potential for customers attempting to exercise choices they do not have<sup>15</sup> or finding themselves without any presubscribed local or local, long-distance carrier.

By granting this Petition, the Commission will ensure that the policy goals of the carrier-change rules are served without compromising the benefits associated with the commercially-reasonable alienation of property and the seamless transition of carriers serving end-user customers in the affected exchanges. Given that the above-outlined circumstances are similar to those in which the Commission has previously granted waivers of its carrier-change rules, U S WEST and Citizens are confident that the Commission will find the granting of this Petition warranted and in the public interest.

Respectfully submitted,

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Of Counsel,  
Dan L. Poole

Its Attorney

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<sup>15</sup> For example, in some cases, there are no other local carriers serving the area in question.

CITIZENS UTILITIES COMPANY

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April 7, 2000

## **EXHIBIT A**



Rural Optimization Project  
NPA/NXX List

<u>STATE</u>	<u>EXCHANGE</u>
AZ	ASHFORK
AZ	BISBEE
AZ	BENSON
AZ	ST DAVID
AZ	CIRCLE CITY
AZ	DUDLEYVILLE
AZ	DOUGLAS
AZ	GILA BEND
AZ	GLOBE
AZ	GRAND CANYON
AZ	HAYDEN
AZ	JOSEPH CITY
AZ	KEARNY
AZ	MIAMI
AZ	MAMMOTH
AZ	MARICOPA
AZ	PAGE
AZ	PIMA
AZ	PALOMINAS
AZ	ELGIN
AZ	PATAGONIA
AZ	SAFFORD
AZ	SOMERTON
AZ	SUPERIOR
AZ	STANFIELD
AZ	MT LEMMON
AZ	TOMBSTONE
AZ	TONTO CREEK
AZ	WICKENBURG
AZ	WHITLOW
AZ	WILLCOX
AZ	WILLIAMS
AZ	WELLTON
AZ	WINSLOW
AZ	YARNELL
AZ	FORTUNA
AZ	YUMA MAIN
AZ	YUMA SOUTHEAST
CO	ALAMOSA
CO	BUENA VISTA
CO	CALHAN
CO	CRESTED BUTTE
CO	DEL NORTE
CO	FAIRPLAY
CO	GUNNISON
CO	JULESBURG
CO	MEEKER
CO	MONTE VISTA

Rural Optimization Project  
NPA/NXX List

<u>STATE</u>	<u>EXCHANGE</u>
CO	MESA VERDE
CO	OAK CREEK
CO	OVID
CO	PEYTON
CO	SALIDA
CO	SOUTHFORK
CO	YAMPA
IA	ALGONA
IA	ANTHON
IA	BLAIRSBURG
IA	BRITT
IA	CORRECTIONVILLE
IA	CHEROKEE
IA	DANBURY
IA	ESTHERVILLE
IA	GILMORE CITY
IA	GARNER
IA	HAMBURG
IA	HUMBOLDT
IA	JEWELL
IA	LANSING
IA	LAURENS
IA	LIVERMORE
IA	LUVERNE
IA	MANLY
IA	MAPLETON
IA	NASHUA
IA	NORTHWOOD
IA	ONAWA
IA	POCAHONTAS
IA	RENWICK
IA	STORM LAKE-ALTA
IA	STUART
IA	SIOUX RAPIDS
IA	WHITTEMORE
IA	WHITING
IA	WILLIAMS
IA	WESLEY
ID	CRAIGMONT
ID	COTTONWOOD
ID	GRANGEVILLE
ID	KAMIAH
ID	KOOSKIA
ID	LAPWAI
ID	LEWISTON SHERWOOD
ID	NEZ PERCE
MN	APPLETON
MN	BEMIDJI
MN	BARNUM
MN	BRAINERD
MN	BATTLE LAKE

Rural Optimization Project  
NPA/NXX List

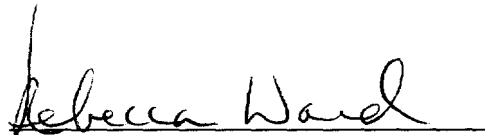
<u>STATE</u>	<u>EXCHANGE</u>
MN	CROOKSTON
MN	CALEDONIA
MN	COOK
MN	CASS LAKE
MN	DETROIT LAKES
MN	FINLAND
MN	FERGUS FALLS
MN	GRAND MARAIS
MN	GLENWOOD
MN	GAYLORD
MN	HOLDINGFORD
MN	HENNING
MN	HAWLEY
MN	JACKSON
MN	LITCHFIELD
MN	LITTLE FALLS
MN	LUVERNE
MN	MAHNOMEN
MN	MOOSE LAKE
MN	MORRIS
MN	MARSHALL
MN	MONTEVIDEO
MN	NISSWA
MN	OLIVIA-BIRD ISLAND
MN	ORTONVILLE-BIG STONE
MN	PARK RAPIDS
MN	PIPESTONE
MN	REDWOOD FALLS-MORTON
MN	ROYALTON
MN	SAUK CENTRE
MN	SILVER BAY
MN	STAPLES
MN	SWANVILLE
MN	TOFTE
MN	TRACY
MN	THIEF RIVER FALLS
MN	WADENA
MN	WILLMAR
MT	COOKE CITY
MT	COLSTRIP
MT	CONRAD
MT	CUT BANK
MT	EAST GLACIER PARK
MT	FORSYTH
MT	FAIRVIEW
MT	SHELBY
MT	ST MARY
MT	WEST GLACIER
ND	ALEXANDER
ND	FAIRMOUNT
ND	GWINNER

Rural Optimization Project  
NPA/NXX List

<u>STATE</u>	<u>EXCHANGE</u>
ND	LISBON
ND	PEMBINA
ND	WILLISTON
ND	WATFORD CITY
ND	WYNDMERE
NE	AINSWORTH
NE	ATKINSON
NE	ATLANTA
NE	EMERSON
NE	FARWELL
NE	HUMPHREY-CRESTON
NE	HOWELLS
NE	O'NEILL
NE	OXFORD
NE	PILGER
NE	RANDOLPH
NE	SILVER CREEK
NE	ST LIBORY
NE	VALENTINE
WY	AFTON
WY	LAKE
WY	LUSK
WY	MAMMOTH
WY	OLD FAITHFUL

## CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on the 7<sup>th</sup> day of April, 2000, I have caused a copy of the foregoing **JOINT PETITION FOR WAIVER OF U S WEST COMMUNICATIONS, INC. AND CITIZENS UTILITIES COMPANY** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.

  
Rebecca Ward

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